

FEDERAL RESERVE SYSTEM

KeyCorp  
Cleveland, Ohio

Order Approving the Merger of Bank Holding Companies and  
the Acquisition of a Bank

KeyCorp, Cleveland, Ohio, a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act,<sup>1</sup> to acquire First Niagara Financial Group, Inc. (“First Niagara”), and thereby indirectly acquire its subsidiary bank, First Niagara Bank, National Association (“First Niagara Bank”), both of Buffalo, New York. Following the proposed acquisition, First Niagara Bank would be merged into KeyCorp’s subsidiary bank, KeyBank National Association (“KeyBank”), Cleveland, Ohio.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 Federal Register 75863 (December 4, 2015)).<sup>3</sup> The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

KeyCorp, with consolidated assets of approximately \$98.6 billion, is the 32nd largest depository organization in the United States.<sup>4</sup> KeyCorp controls

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<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> The merger of First Niagara Bank into KeyBank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

<sup>3</sup> 12 CFR 262.3(b).

<sup>4</sup> Asset data are as of March 31, 2016, and deposit data are as of June 30, 2015, unless otherwise noted.

approximately \$72.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>5</sup> KeyCorp controls KeyBank, which operates in Alaska, Colorado, Florida, Idaho, Indiana, Maine, Michigan, New York, Ohio, Oregon, Utah, Vermont, and Washington. KeyBank is the 15th largest insured depository institution in New York, controlling deposits of approximately \$15.0 billion, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state.

First Niagara, with consolidated assets of approximately \$40.1 billion, is the 45th largest depository organization in the United States. First Niagara controls approximately \$29.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Niagara controls First Niagara Bank, which operates in Connecticut, Massachusetts, New York, and Pennsylvania. First Niagara Bank is the 14th largest insured depository institution in New York, controlling deposits of approximately \$18.8 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, KeyCorp would become the 26th largest depository organization in the United States, with consolidated assets of approximately \$138.7 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. KeyCorp would control total deposits of approximately \$101.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>6</sup> KeyCorp would become the ninth largest depository organization in New York, controlling deposits of approximately \$33.8 billion,

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<sup>5</sup> In this context, insured depository institutions include commercial banks, credit unions, savings banks, and savings associations.

<sup>6</sup> The pro forma deposits of the combined organization include the deposits that KeyCorp proposes to divest through its sale of 18 First Niagara Bank branches in Buffalo, New York, discussed in more detail below.

which represent approximately 2.5 percent of the total deposits of insured depository institutions in that state.

### Public Comments on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Board's Rules of Procedure.<sup>7</sup> The Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until January 31, 2016, a total period of 62 days, to submit written comments. The time for submitting comments has expired, and the Board received comments concerning the proposal from 439 individuals and organizations.

The Board received comments from 388 commenters supporting the proposal. Most of these commenters are charitable and community organizations that describe favorable experiences with KeyCorp and KeyBank and commended the company and its management for its support of various community development programs, initiatives, projects, and partnerships. Supporting commenters also asserted that KeyBank has (i) worked to expand credit in distressed areas, (ii) provided low- and moderate-income ("LMI") households with access to financial services and programs in financial literacy, and (iii) developed innovative projects to benefit low-income and minority communities.

The Board received comments from 51 commenters either opposing or expressing concerns about the proposal or requesting that the Board only approve the proposal subject to certain conditions. Many commenters alleged that the proposal would have significant anticompetitive effects in certain upstate New York banking markets, particularly in the Buffalo-Niagara Falls, New York banking market ("Buffalo market"). Many commenters also alleged that branch closures and consolidations contemplated by KeyCorp in connection with the transaction would result in significant job losses and a

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<sup>7</sup> See 12 CFR 262.3(b).

reduction in the availability of banking services and products in upstate New York, particularly in LMI communities. Several commenters alleged that the products and services offered by KeyBank are inferior to those offered by First Niagara Bank, and some criticized KeyBank's lending record to minorities in certain Metropolitan Statistical Areas ("MSAs"), based on lending data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"). Some commenters questioned the merger consideration to be paid to First Niagara shareholders, and some criticized the payments that certain First Niagara executives would receive upon consummation of the proposal. Two commenters also alleged that the proposal would have a negative impact on the financial stability of the United States.

#### Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.<sup>8</sup> Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.<sup>9</sup> In addition, the Board may not approve an interstate application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company would upon consummation control 30 percent or more of the total deposits of insured depository institutions in the

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<sup>8</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>9</sup> 12 U.S.C. § 1842(d)(1)(B).

target bank's home state or in any state in which the acquirer and target have overlapping banking operations.<sup>10</sup>

For purposes of the BHC Act, the home state of KeyCorp is Ohio and the home state of First Niagara is New York.<sup>11</sup> First Niagara also operates in Connecticut, Massachusetts, and Pennsylvania. KeyCorp is well capitalized and well managed under applicable law, and KeyBank has a satisfactory Community Reinvestment Act ("CRA")<sup>12</sup> rating. Massachusetts has a three-year minimum age requirement and New York and Connecticut have five-year requirements. First Niagara has been in existence for more than five years.<sup>13</sup> Pennsylvania does not have a minimum age requirement that applies to KeyCorp's acquisition of First Niagara and First Niagara Bank.<sup>14</sup>

On consummation of the proposed transaction, KeyCorp would control less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In addition, KeyCorp would control approximately 2.5 percent of the total amount of deposits of insured depository institutions in New York, the only state in which KeyCorp and First Niagara have overlapping banking operations. Accordingly, in

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<sup>10</sup> 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. See 12 U.S.C. § 1841(o)(4)–(7).

<sup>11</sup> See 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A national bank's home state is the state in which the main office of the bank is located.

<sup>12</sup> 12 U.S.C. § 2901 *et seq.*

<sup>13</sup> See Mass. Gen. Laws ch. 167A, § 2; N.Y. Banking Law § 142-a(1); Conn. Gen. Stat. § 36a-411.

<sup>14</sup> See 7 Pa. Stat. Ann. §§ 1601–1610.

light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>15</sup>

KeyCorp and First Niagara have subsidiary depository institutions that compete directly in 12 banking markets in the state of New York: the Albany, Binghamton, Buffalo, Franklin, Ithaca, Jamestown, Metro New York City, Rochester, Saint Lawrence, Syracuse, Utica-Rome, and Watertown banking markets (“New York banking markets”).<sup>16</sup>

The Board received comments from 23 commenters objecting to the proposal on the grounds that it would have significant anticompetitive effects in certain upstate New York banking markets, particularly the Buffalo market. Commenters expressed concern that consummation of the proposal would, among other things, have an adverse impact on the rates and products offered in the upstate New York region. Some commenters asserted that the upstate New York region is already highly concentrated and that the proposal would reduce consumer access to banking competition in the region to an unacceptably low level.

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<sup>15</sup> 12 U.S.C. § 1842(c)(1).

<sup>16</sup> Except for the Buffalo market, these banking markets are defined in the Appendix. Certain New York banking markets include areas of Connecticut, New Jersey, and Pennsylvania.

The Board has considered the competitive effects of the proposal in each of the relevant markets. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that would be controlled by KeyCorp;<sup>17</sup> the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>18</sup> the comments received on the proposal; other characteristics of the markets; and, as discussed below, commitments made by KeyCorp to divest 18 First Niagara Bank branches in the Buffalo market.

*Banking Markets Within Established Guidelines*

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Albany, Binghamton, Franklin, Ithaca, Jamestown, Metro New York City, Rochester, Saint

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<sup>17</sup> Deposit and market share data are as of June 30, 2015, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in market share calculations on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>18</sup> Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

Lawrence, Syracuse, Utica-Rome, and Watertown markets.<sup>19</sup> On consummation of the proposal, the change in the HHI in the Metro New York City, Rochester, and Utica-Rome markets would be small, and the markets would remain unconcentrated. Although the change in the HHI in the Albany, Jamestown, and Syracuse markets would be above 200, each of these banking markets would remain moderately concentrated. The Binghamton, Franklin, Ithaca, Saint Lawrence, and Watertown markets would remain highly concentrated but the changes in the HHI in these markets would be small. In each of these banking markets, numerous competitors would remain.

*Banking Market Warranting Special Scrutiny*

The structural effects that consummation of the proposal would have in the Buffalo market<sup>20</sup> warrant a detailed review because the concentration level on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data. Using that screening data, KeyCorp is the third largest depository organization in the Buffalo market, controlling approximately \$3.6 billion in deposits, which represent approximately 8.7 percent of market deposits. First Niagara is the second largest depository organization in the Buffalo market, controlling approximately \$10.4 billion in deposits, which represent approximately 25.0 percent of market deposits. On consummation, KeyCorp would become the second largest depository organization in the Buffalo market, controlling approximately \$14.1 billion in deposits, which represent approximately 33.7 percent of market deposits. The HHI in this market would increase by 436 points, from 3167 to 3603.

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<sup>19</sup> The competitive effects of the proposal in these markets are described in the Appendix.

<sup>20</sup> The Buffalo market is defined as Cattaraugus, Erie, and Niagara counties; Allen, Alma, Amity, Angelica, Belfast, Bolivar, Caneadea, Centerville, Clarksville, Cuba, Friendship, Genesee, Granger, Hume, New Hudson, Rushford, Scio, and Wirt towns, and Oil Springs reservation in Allegany County; Batavia city, Alabama, Alexander, Batavia, Darien, Oakfield, and Pembroke towns, and Tonawanda reservation in Genesee County; Ridgeway and Shelby towns in Orleans County; and Arcade, Attica, Bennington, Eagle, Java, Orangeville, Pike, Sheldon, and Wethersfield towns in Wyoming County, all in New York.

To mitigate the potentially adverse competitive effects of the proposal in the Buffalo market, KeyCorp has committed to divest 18 of First Niagara Bank's 55 branches in the Buffalo market to a competitively suitable purchaser.<sup>21</sup> In addition to the divestiture, the Board also has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Buffalo market.<sup>22</sup> The competitive effects are mitigated by several factors that indicate that the increase in concentration in the Buffalo market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market. One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Buffalo market,<sup>23</sup> as measured in terms of the ratios of those types of loans to total loans

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<sup>21</sup> As a condition of consummating the proposal, KeyCorp has committed that it will execute, before consummation of the proposal, a sales agreement with a competitively suitable institution for the sale of 18 branches. KeyCorp also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, KeyCorp has committed that, if the proposed divestiture is not completed within the 180-day period, KeyCorp would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. See, e.g., BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

<sup>22</sup> The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. See NationsBank Corporation, 84 Federal Reserve Bulletin 129 (1998).

<sup>23</sup> The standard treatment of thrifts in the competitive analysis is to give their deposits 50-percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. See, e.g., Banknorth Group, Inc., 75 Federal Reserve Bulletin 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a

and assets.<sup>24</sup> The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, nine credit unions exert a competitive influence in the Buffalo market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the market.<sup>25</sup> The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

Taking into account the divestiture of the 18 First Niagara Bank branches, and with the deposits of the thrift weighted at 100 percent and the nine credit unions at 50 percent, the Buffalo market appears to be highly concentrated before and after the transaction, but the HHI would increase by less than 200 points. Upon consummation of the merger, KeyCorp would control approximately 29.1 percent of market deposits, and the HHI would increase by 190 points to a level of 3272, a level that would be within the

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commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. See, e.g., River Valley Bancorp, FRB Order No. 2012-10 (October 17, 2012); Regions Financial Corporation, 93 Federal Reserve Bulletin C16 (2007); and Banknorth Group, Inc., *supra*.

<sup>24</sup> This thrift institution has a ratio of commercial and industrial loans to assets of slightly less than 5 percent, which has been increasing in recent years. This is comparable to the ratio for some commercial banks in the market and greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks. *Id.*

<sup>25</sup> The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., Mitsubishi UFJ Financial Group, Inc., FRB Order No. 2012-12 (November 14, 2012); Old National Bancorp, FRB Order No. 2012-9 (August 30, 2012); United Bankshares, Inc., (order dated June 20, 2011), 97 Federal Reserve Bulletin 19 (2d Quar. 2011); The PNC Financial Services Group, Inc., 94 Federal Reserve Bulletin C38 (2008); The PNC Financial Services Group, Inc., 93 Federal Reserve Bulletin C65 (2007); Regions Financial Corporation, 93 Federal Reserve Bulletin C16 (2007); Passumpsic Bancorp, 92 Federal Reserve Bulletin C175 (2006); and Wachovia Corporation, 92 Federal Reserve Bulletin C183 (2006).

DOJ Bank Merger Guidelines. Including thrifts, 19 depository organizations would continue to operate in the Buffalo market, including one institution with a market share of almost 50 percent, and two other institutions with market shares above 8 percent.

The DOJ also has conducted a review of the potential competitive effects of the merger and has advised the Board that consummation of the proposal with the proposed divestiture of branches as discussed above would not likely have a significantly adverse effect on competition in any relevant banking market, including the Buffalo market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, including the proposed divestiture commitments, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the 12 banking markets in which KeyCorp and First Niagara compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

#### Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration

of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

KeyCorp and KeyBank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions.<sup>26</sup> The asset quality, earnings, and liquidity of KeyBank and First Niagara Bank are consistent with approval, and KeyCorp appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of KeyCorp, First Niagara, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by KeyCorp; the Board's supervisory experiences with KeyCorp and First Niagara and those of other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

KeyCorp, First Niagara, and their subsidiary depository institutions are each considered to be well managed. KeyCorp's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services

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<sup>26</sup> To effect the holding company merger, each share of First Niagara common stock would be converted into a right to receive KeyCorp common stock and cash, based on an exchange ratio. KeyCorp has adequate resources to fund the cash portion of the transaction.

sectors, and its risk-management program appears consistent with approval of this expansionary proposal.<sup>27</sup>

The Board also has considered KeyCorp's plans for implementing the proposal. KeyCorp has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-integration process for this proposal. KeyCorp would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, KeyCorp's and First Niagara's managements have the experience and resources to ensure that the combined organization operates in a safe and sound manner, and KeyCorp plans to integrate First Niagara's existing management and personnel in a manner that augments KeyCorp's management.<sup>28</sup>

Based on all the facts of record, including KeyCorp's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and comments received on the proposal, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of KeyCorp and First Niagara in combatting money-laundering activities, are consistent with approval.

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<sup>27</sup> Several commenters expressed concerns regarding the share price offered for First Niagara. Some commenters also expressed concerns that the transaction would mostly benefit First Niagara executives and criticized payments that certain First Niagara executives may receive upon consummation of the proposal. The Board notes that KeyCorp and First Niagara filed with the U.S. Securities and Exchange Commission information regarding the proposed transaction, including information concerning the compensation of certain First Niagara executives, and shareholders of both organizations approved the proposal.

<sup>28</sup> KeyCorp plans to increase the number of seats on its board of directors and, on consummation, First Niagara would select three of its current directors to join KeyCorp's board. In addition, KeyCorp anticipates inviting other current First Niagara directors to serve on one or more of KeyCorp's regional advisory boards.

## Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>29</sup> In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.<sup>30</sup> In addition, the Board considers the banks' overall compliance record, the results of recent fair lending examinations, and other supervisory assessments; the supervisory views of examiners; and other supervisory information. The Board also may consider the applicant institution's business model, its marketing and outreach plans, the institution's plans following consummation, and any other information the Board deems relevant.

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,<sup>31</sup> and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods, in evaluating bank expansionary proposals.<sup>32</sup> In addition, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics.

The Board has considered all the facts of record, including reports of examination of the CRA performance of KeyBank and First Niagara Bank, the fair

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<sup>29</sup> 12 U.S.C. § 1842(c)(2).

<sup>30</sup> 12 U.S.C. § 2901 et seq.

<sup>31</sup> 12 U.S.C. § 2901(b).

<sup>32</sup> 12 U.S.C. § 2903.

lending and compliance records of both banks, the supervisory views of the OCC and the Consumer Financial Protection Bureau (“CFPB”), confidential supervisory information, information provided by KeyCorp, and the public comments received on the proposal.

*Summary of Public Comments on Convenience and Needs*

As noted above, the Board received comments from 388 commenters supporting the proposal. A majority of these commenters are charitable and community organizations that pointed to the benefits that KeyCorp has provided to the communities that they serve. These commenters described numerous grants and donations made by KeyCorp to charitable organizations and educational providers in communities across the country and noted that KeyCorp has provided financial aid to LMI students and funded financial literacy programs. These commenters also described KeyCorp’s participation in community-related activities, such as tax preparation services for indigent persons and participation in financial literacy programs.

Twenty-eight commenters argued that the proposal would negatively affect the convenience and needs of the communities served by KeyCorp and First Niagara. These commenters expressed concerns that the branch closures, consolidations, and divestitures planned by KeyCorp in connection with the proposal would adversely impact the Buffalo market and the upstate New York region generally, because portions of the region are already underserved from a banking perspective. These commenters further asserted that certain portions of the local population, including LMI individuals, persons living in LMI neighborhoods, and disabled persons, depend upon their physical access to bank branches and ATMs, and that the planned branch closures would have the effect of limiting that access. Several commenters claimed that First Niagara Bank customers would experience service disruptions during the merger integration process. In addition, many commenters expressed concern that the proposal would result in significant job losses in upstate New York.

Commenters also made various assertions related to KeyCorp’s lending, investment, and service activities. Several commenters requested that KeyCorp commit to a comprehensive plan outlining specific strategies and goals for enhancing the

communities it serves, including demonstrating a significant public benefit. Some commenters requested that the Board's approval of the transaction be conditioned on KeyCorp developing a comprehensive community benefits plan that better serves the communities affected by the merger. Some commenters proposed potential lending, investment, or service initiatives that KeyBank could pursue in the communities it serves, particularly in upstate New York, or argued that KeyBank's proposed initial commitment to charitable donations is inadequate relative to the proposed expansion of the organization's overall footprint.

Commenters also alleged that KeyBank and First Niagara Bank are not meeting the credit needs of certain communities that the banks serve, and criticized the banks' lending records to minority borrowers in certain markets, based on 2013 HMDA data. Commenters expressed concerns about a potential increase in discriminatory lending in the markets that will be served by the combined organization following the proposed transaction.

*Businesses of the Involved Institutions and Response to Comments*

KeyCorp, through KeyBank and its nonbanking subsidiaries, provides a wide range of retail and commercial banking, commercial leasing, investment management, consumer finance, and investment banking products and services to individual, corporate, and institutional clients. KeyCorp provides a range of financial products and services, including deposit, lending, cash management, investment products, equipment finance, retail securities brokerage, insurance, and institutional asset management services. First Niagara, through First Niagara Bank and its nonbanking subsidiaries, provides retail and business banking services, including residential and commercial real estate loans, commercial business loans and leases, consumer loans, wealth management products, deposit products, and capital markets services. First Niagara Bank provides customers retail and commercial deposit products, residential and commercial real estate loans, commercial business loans and leases, consumer loans, and wealth management products. In New York, the only state in which the banks have

overlapping operations, KeyBank and First Niagara Bank operate 239 and 195 branches, respectively.

KeyCorp asserts that it is strongly committed to serving its communities, particularly LMI communities, demonstrated by the fact that KeyBank has received eight consecutive overall “Outstanding” CRA ratings. KeyCorp argues that, since KeyBank’s most recent CRA evaluation, it has provided a substantial number of community development loans supporting activities aimed at benefitting LMI individuals and communities, and has made significant community development investments. KeyCorp further contends that its commitment to its communities is demonstrated by its development of a suite of innovative, low-cost products and services designed to benefit LMI individuals. KeyCorp asserts that it expects to improve upon First Niagara’s existing programs under the CRA in the communities served by First Niagara, and will continue providing a high level of services to the LMI communities it already serves.

KeyCorp argues that its legacy of community investment and civic participation demonstrates that it will take seriously the concerns expressed by commenters regarding community banking and investments. In response to these commenters, KeyCorp held community outreach meetings and worked closely with various community organizations to develop a National Community Benefits Plan (“Plan”). The Plan calls for KeyBank to invest \$16.5 billion in its communities over a five-year period, starting in 2017. KeyCorp asserts that up to 35 percent of the total commitment would be targeted for the areas where KeyBank and First Niagara Bank currently overlap in New York. The Plan establishes goals for loans, investments, and products specifically aimed at benefitting LMI individuals and communities, including home mortgages, small business loans, community development loans, investments, and philanthropic contributions. In addition, the Plan establishes targets for branching in LMI communities across the bank’s geographic footprint and, separately, the state of New York. The bank will open an additional branch in an LMI community in East Buffalo and keep open four other branches in LMI neighborhoods that the bank initially planned to close. KeyCorp further asserts that the bank will enhance its diversity and inclusion

policies, expand its community engagement and marketing efforts, and establish an advisory council made up of various community organizations that will meet periodically to assess KeyBank's progress under the Plan and to be informed of the bank's future initiatives. KeyCorp asserts that the Plan addresses, and should substantially resolve, the concerns expressed by commenters.

KeyCorp asserts that the proposed branch closures would optimize the combined organization's branch network due to the significant overlap between KeyBank's and First Niagara Bank's branch networks in upstate New York. KeyCorp further asserts that in many cases, the closures are effectively branch consolidations and that the availability of banking services in those communities will not be reduced, because another KeyBank branch will be in close proximity. Moreover, KeyCorp represents that the branch closures would be completed in accordance with the OCC's branch closing notice regulations, which provide the public an opportunity to comment, and KeyBank's branch closing policy.<sup>33</sup> KeyCorp asserts that it is committed to maintaining branch access in LMI communities, and for branch closings in LMI areas, KeyCorp would seek to ensure that another branch would remain in close proximity of the closed branch.

Lastly, KeyCorp contends that it has taken substantial steps to ensure that consummation of the proposal would not result in any disruption of banking services, including the closing of accounts, for customers of First Niagara Bank. KeyCorp has assembled an integration team with significant experience in customer and systems integration, which is working with its counterparts at First Niagara to ensure that the transition from First Niagara to KeyCorp is as seamless as possible for customers.

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<sup>33</sup> Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Fed. Reg. 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

*Records of Performance under the CRA*

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.<sup>34</sup> In this case, the Board considered the supervisory views of and information provided by the OCC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.<sup>35</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending

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<sup>34</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 Fed. Reg. 11,642, 11,665 (March 11, 2010).

<sup>35</sup> 12 U.S.C. § 2906.

performance is based on a variety of factors, including (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amount of loans to low-, moderate-, middle-, and upper-income individuals;<sup>36</sup> (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

As noted above, some commenters alleged that, based on 2013 HMDA data, KeyBank and First Niagara Bank have failed to adequately serve all of their communities, including the Buffalo market, and that KeyBank has not shown a desire to expand services in that market.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.<sup>37</sup> Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

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<sup>36</sup> Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

<sup>37</sup> Other data relevant to credit decisions could include credit history problems, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending

### *CRA Performance of KeyBank*

KeyBank was assigned an overall rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of October 1, 2011 (“KeyBank Evaluation”).<sup>38</sup> KeyBank received “Outstanding” ratings for the Lending Test and the Service Test and a “High Satisfactory” rating for the Investment Test. Although KeyBank’s overall rating was based on a blend of its state and multistate metropolitan area ratings, examiners gave the greatest weight to the Cleveland-Elyria-Mentor, Ohio MSA; the Albany-Schenectady-Troy, New York MSA; and the Seattle-Bellevue, Washington MSA (“primary rating areas”), because those three primary rating areas represented the bank’s most significant markets in terms of deposit concentrations. The Board has consulted with the OCC regarding the KeyBank Evaluation and KeyBank’s policies and procedures relating to the CRA.

Examiners concluded that KeyBank’s lending performance was excellent overall. KeyBank’s borrower distribution was good in all three primary rating areas, and geographic distribution was good in two primary rating areas and adequate in one. Examiners noted that the bank’s HMDA loan distribution by borrower was excellent in one primary rating area and good in the other two, and its HMDA geographic distribution was good in two primary rating areas. Geographic distribution of small loans to

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examinations, examiners analyze such additional information before reaching a determination regarding an institution’s compliance with fair lending laws.

<sup>38</sup> The KeyBank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners used 2010 Mortgage and Small Business Peer Data to evaluate the bank’s lending market share. For deposit information, examiners used the most recent Federal Deposit Insurance Corporation Deposit Market Share Reports, as of June 30, 2011. The KeyBank Evaluation reviewed HMDA and small business/farm loan originations from January 1, 2008, through June 30, 2011. The evaluation period for investment, retail, and community development activities (loans and services) was July 1, 2008, through September 30, 2011. The KeyBank Evaluation included full-scope reviews of one assessment area in each state where KeyBank had a branch (typically, the MSA or metropolitan division that contained the largest percentage of the bank’s deposits within the state), as well as each multistate MSA where the bank had branches in more than one state.

businesses was excellent in two primary rating areas, and good in the third. Examiners found KeyBank's community development lending to be significantly positive, which elevated the bank's lending performance to excellent in two primary rating areas. The elevated ratings were based on the significance of community development lending volume, innovativeness, complexity, and level of responsiveness by the bank to community needs.

Examiners found that KeyBank had a good volume of qualified community development investments and grants overall. The bank's excellent performance in limited-scope assessment areas had a positive impact on overall performance in one primary rating area. The bank showed good responsiveness to community needs for affordable housing primarily through the purchase of Low Income Housing Tax Credits ("LIHTC"), which were the foundation of the bank's investment strategy. Examiners found the bank responded favorably to community needs for revitalization and stabilization of LMI neighborhoods, although to a lesser degree. Examiners noted that the bank made significant use of complex investments through LIHTCs that routinely involved collaborative efforts among numerous funding sources, including government entities, private equity funds, financial institutions, and other private investors. The investments were responsive to affordable housing and revitalization and stabilization needs throughout the bank's assessment areas.

Examiners concluded that KeyBank's service performance was excellent overall. Examiners noted that the bank's delivery systems were readily accessible to all portions of the bank's assessment areas, and that branch distribution was excellent in the three primary rating areas. Access to banking facilities and services was enhanced in the primary rating areas by offices located in middle-income geographies located in close proximity to moderate-income geographies. Examiners found that KeyBank's record of opening and closing branch offices had improved the accessibility of delivery systems in LMI geographies and that, within the primary rating areas, branch hours did not vary in a way that inconvenienced LMI geographies. The bank was found to offer similar products and services throughout its branch network, and some of the products were tailored for

LMI geographies and individuals. Examiners stated that in one primary rating area, consumer advocates considered the bank's alternate payday lending product to be a model for other banks. Examiners found that the bank offered a relatively high level of community development services in its primary rating areas.

*KeyBank's CRA Efforts Since the 2011 Evaluation*

KeyCorp represents that, since the KeyBank Evaluation, the bank has made community development loans across its entire geographic footprint to support activities including affordable housing, economic development, community services for LMI persons or communities, and revitalization and stabilization of LMI areas. KeyBank has developed community lending products and services aimed at extending banking services to individuals who may be new or unfamiliar with banking, or who have had challenges managing a banking relationship in the past. The products include low-fee check cashing services, deposit accounts, low-fee revolving lines of credit, credit rehabilitation loans, and affordable home financing. KeyBank is one of only three insured depository institutions approved by the U.S. Department of Housing and Urban Development as a Multifamily Accelerated Processing Lender, enabling the bank to make expedited lending decisions on multifamily mortgage applications. The bank provides free in-person financial literacy education for all members of its communities on topics such as budgeting, managing money, and building and maintaining good credit, which are taught by KeyCorp employee volunteers. The bank also offers online financial literacy courses in English and Spanish, and provides free tax preparation for local residents during its annual "Super Refund Saturday" event.

Since the KeyBank Evaluation, the bank also has provided HMDA-reportable loans, small business or small farm loans, and community development loans in the Buffalo market. The bank provided community development loans supporting the construction of affordable housing units and redevelopment of commercial, industrial, and mixed-use buildings. In addition, KeyBank provided construction loans in connection with an affordable multifamily residential development aimed at providing housing options and amenities for families with incomes ranging 40 to 80 percent below

the area's median income, and for the development of additional infrastructure needed to provide access to a community redevelopment site. KeyBank also made community development investments in the Buffalo market, including through LIHTC investments and New Market Tax Credit investments. In addition, KeyBank Foundation, KeyCorp's nonprofit charitable foundation, made donations to various philanthropic causes across the upstate New York region.

#### *CRA Performance of First Niagara Bank*

First Niagara Bank was assigned an overall "Satisfactory" rating at its CRA performance evaluation by the Office of Thrift Supervision ("OTS"), as of March 12, 2007 (the "First Niagara Bank Evaluation").<sup>39</sup> The bank received "High Satisfactory" ratings for the Lending Test and the Service Test, and received an "Outstanding" rating for the Investment Test.<sup>40</sup> The OCC is now the primary supervisor of First Niagara Bank and has been conducting its own evaluation of the bank's CRA performance.

Overall, examiners found that the vast majority of the bank's lending was originated within its assessment areas; however, levels of lending varied by specific assessment area. Examiners noted that the bank's geographic distribution of its residential lending was adequate overall, but varied by assessment area. Examiners noted

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<sup>39</sup> The First Niagara Bank Evaluation was conducted using OTS Large Institution Examination Procedures, and the examiners evaluated the following factors: performance in granting residential, small business, and community development loans; the level of retail banking and community development services provided; and the level of qualified investments made within the assessment area. The review period was 2004-2006. The lending test focused on loans reportable in accordance with HMDA, small business loans, and community development loans. Examiners also considered information provided by community leaders in the bank's assessment areas.

<sup>40</sup> For the First Niagara Bank Evaluation, examiners conducted reviews of the following entire MSAs: Buffalo-Niagara Falls; Albany-Schenectady-Troy; Glen Falls; and Ithaca, all in New York. The examiners conducted reviews of certain counties in the following MSAs: Rochester, Syracuse, Utica-Rome, and Poughkeepsie-Newburgh-Middletown. Examiners also conducted reviews of the following counties in non-MSAs: Greene, Columbia, Seneca, Courtland, Cayuga, Fulton, Montgomery, and Genesee, all in New York.

that the bank's distribution of home loans based on borrower income was reasonable overall, but varied from excellent to poor depending on the specific assessment area. Examiners also noted that loan volume in LMI geographies was adequate overall, but was poor in several assessment areas. Examiners highlighted that in several assessment areas, the bank had an excellent volume of multifamily lending, particularly in LMI census tracts. Examiners also found that the bank displayed a consistently excellent level of small business lending throughout its assessment areas. Examiners emphasized that the bank had a good record of community development lending and used flexible, innovative, and alternative lending programs to help make credit available to LMI borrowers within its assessment areas and that the bank had used Federal Home Loan Bank programs extensively. Examiners further noted that the bank's delivery systems were accessible to all portions of its assessment areas, and the bank provided a satisfactory level of community development services to its many communities.

First Niagara Bank was scheduled by the OCC for a CRA evaluation in 2012. Although that evaluation is largely complete, the results have not been released. The Board has consulted with the OCC regarding the First Niagara Bank Evaluation and this subsequent CRA evaluation. The Board notes that KeyCorp would be applying its CRA program, policies, procedures, and initiatives at the combined organization and that KeyBank has received eight consecutive "Outstanding" ratings for CRA.

*Views of the OCC and CFPB*

The Board has consulted with the OCC, the primary supervisor of both KeyBank and First Niagara Bank, in connection with this proposal and the OCC's review of the bank merger underlying this proposal. The OCC separately received comments on the bank merger application, and was provided with the comments received by the Board both in support of and against the proposal. The OCC is considering all of the comments in connection with its review of the bank merger application.

In its review of the proposal, the Board consulted the OCC regarding both institutions' CRA, consumer compliance, and fair lending records. The Board also consulted with the OCC regarding KeyBank's policies and procedures relating to fair

lending and other consumer protection laws and regulations, and KeyBank's ability to integrate First Niagara Bank and resolve any concerns in a timely manner. In addition to consulting with the OCC, the Board also consulted with the CFPB regarding First Niagara Bank's record of compliance with consumer protection laws and regulations and policies and procedures relating to fair lending and other consumer protection laws and regulations, as well as about the lending records of both KeyBank and First Niagara Bank.

The OCC has indicated that it has no outstanding supervisory concerns regarding KeyBank's policies and procedures, and that it is continuing to evaluate the application pending before it. KeyBank has committed to implement its policies and procedures at the combined organization, and the Board expects that they will be commensurate with the increased size and complexity of the combined organization. Based on the Board's consultations with the OCC and the information discussed above, KeyCorp appears capable of effectively implementing its policies, procedures, and programs across the combined organization to effectively serve all communities within the firm's geographic footprint, and of addressing any consumer compliance concerns or issues that may arise at the combined organization. The Board also expects KeyCorp to engage in activities to help meet community credit needs at a level commensurate with the expanded size and scope of the combined organization, consistent with safe and sound lending practices. In addition, KeyCorp should ensure that KeyBank complies with any commitments or conditions that the OCC may request or impose in connection with its action on the bank merger proposal.

#### *Additional Convenience and Needs Considerations*

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. KeyCorp represents that the proposal would provide customers of the combined organization access to additional or expanded products and services that are not currently offered to First Niagara Bank customers, including deposit, online banking, mobile banking and alternative loan products, several of which are designed specifically for LMI customers. KeyCorp states that customers of the combined organization would also have access to First Niagara

Bank's insurance and indirect auto lending products that are not currently offered to KeyBank customers. KeyCorp represents that the proposal would not result in significant reductions in products or services currently offered by the institutions, and notes that KeyBank would waive various account fees for a period of time to give First Niagara Bank customers an opportunity to learn more about KeyBank's products.

KeyCorp represents that customers would benefit from the combined organization's enhanced lending capabilities. KeyCorp highlights KeyBank's commitment under the Plan to substantially increase its residential mortgage lending, small business and farm lending, and community development lending and investments. KeyCorp also represents that KeyBank would further enhance its community engagement efforts by (1) creating a product innovation fund to develop new products for urban and rural LMI communities, (2) conducting forums with community partners to educate consumers and small businesses regarding the bank's product offerings, and (3) adding a corporate responsibility officer in each of the organization's major markets.

KeyCorp further represents that as a result of the proposal, customers of the combined organization would have access to a substantially larger branch and ATM network. KeyCorp also states that the combined organization will explore offering, at First Niagara Bank's branches located in LMI communities, its array of "KeyBank Plus" services, which include hassle-free checking accounts, small-dollar loan products, reasonably priced check cashing services, a first-time homebuyer product, an unsecured revolving credit line, first-time savings accounts, and financial education programs.<sup>41</sup>

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<sup>41</sup> Some commenters also expressed concerns about potential job losses in upstate New York that would result from the proposal. KeyCorp represents that it has taken steps to minimize job losses in affected markets, including designating First Niagara's existing loan servicing unit, located in Buffalo, to serve as KeyCorp's underwriting, fulfillment, and portfolio management platforms, and instituting an enterprise-wide hiring freeze for certain non-client facing positions in order to maximize the number of retention opportunities available to First Niagara employees. This concern, however, is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10<sup>th</sup> Cir. 1973); see also, e.g., Wells Fargo & Company,

### *Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by KeyCorp, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

### Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act to require the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”<sup>42</sup>

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the

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82 Federal Reserve Bulletin 445 (1996); and Community Bank System, Inc., FRB Order No. 2015-34 (November 18, 2015).

<sup>42</sup> Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

resulting firm.<sup>43</sup> These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.<sup>44</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system, including the public comments.<sup>45</sup> Both the acquirer and target are predominantly engaged in retail commercial banking activities.<sup>46</sup> The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the

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<sup>43</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>44</sup> For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

<sup>45</sup> Two commenters generally raised financial stability concerns, asserting that the proposal is further evidence that the federal banking agencies are not giving financial stability considerations enough weight.

<sup>46</sup> As noted above, KeyCorp primarily accepts retail deposits and engages in retail and commercial banking, commercial leasing, investment management, consumer finance, and investment banking products and services. First Niagara accepts retail deposits and engages in mortgage lending, consumer lending, and business loans. In each of its activities, KeyCorp has, and as a result of the proposal would continue to have, a small share on a nationwide basis, and numerous competitors would remain.

U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

#### Requests for Public Hearings or Meetings and Extension of Comment Period

Some commenters requested that the Board hold public hearings or public meetings on the application. The BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application.<sup>47</sup> The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a formal or informal hearing or other proceeding on an application,<sup>48</sup> if appropriate, to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views.

The Board has considered the requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal. As noted above, the Board extended the initial period for public comment to accommodate the public interest in this proposal, providing interested persons until January 31, 2016, a total period of 62 days, to submit written comments. Commenters submitted numerous written comments that the Board has considered in acting on the proposal. The requests do not identify disputed issues of fact material to the Board's decision that would be clarified by a public hearing or meeting. In addition, the requests do not demonstrate why written comments do not present the commenters' views adequately or why a hearing or meeting would otherwise be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the requests for a public meeting or hearing on the proposal are denied.

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<sup>47</sup> 12 U.S.C. § 1842(b)(1); 12 CFR 225.16(e).

<sup>48</sup> 12 CFR 225.16(e).

In addition, one commenter requested a further extension of the comment period of the proposal. The Board has already provided for an extended comment period of 62 days. During this time, a number of commenters, including the requester, submitted detailed comments in writing regarding the proposal. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time.<sup>49</sup> The commenter's request for additional time does not identify circumstances that would warrant a further extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend further the public comment period.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by KeyCorp with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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<sup>49</sup> 12 CFR 262.25(b)(2); 12 CFR 225.16(c)(2).

The proposal may not be consummated before the 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of Cleveland, acting under delegated authority.

By order of the Board of Governors,<sup>50</sup> effective July 12, 2016.

*Margaret McCloskey Shanks (signed)*

Margaret McCloskey Shanks  
Deputy Secretary of the Board

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<sup>50</sup> Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Appendix

<p align="center"><b>KeyCorp/First Niagara Banking Markets in New York Consistent with Board Precedent and DOJ Bank Merger Guidelines</b></p>						
<p>Data and rankings are as of June 30, 2015. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts.</p>						
<p><b>Albany, New York</b> – includes Albany, Fulton, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington counties; Austerlitz, Canaan, Chatham, Claverack, Ghent, Hillsdale, Kinderhook, New Lebanon, Stockport, and Stuyvesant towns in Columbia County; and Ashland, Athens, Cairo, Coxsackie, Durham, Greenville, Jewett, New Baltimore, Prattsville, and Windham towns in Greene County.</p>						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>KeyCorp Pre-Consummation</i>	1	\$5.5B	23.43	1620	536	24
<i>First Niagara</i>	3	\$2.7B	11.45			
<i>KeyCorp Post-Consummation</i>	1	\$8.3B	34.87			
<p><b>Binghamton, New York-Pennsylvania</b> – includes Broome, Chenango, Otsego, and Tioga counties, all in New York; and Friendsville, Great Bend, Hallstead, Lanesboro, Little Meadows, New Millford, Oakland, Susquehanna Depot, and Thompson boroughs, and Apolacon, Choconut, Forest Lake, Franklin, Great Bend, Harmony, Jackson, Liberty, Middletown, New Milford, Oakland, Silver Lake, and Thompson townships in Susquehanna County, Pennsylvania.</p>						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
<i>KeyCorp Pre-Consummation</i>	11	\$137.3M	2.22	1861	24	11
<i>First Niagara</i>	5	\$339.9M	5.51			
<i>KeyCorp Post-Consummation</i>	4	\$477.2M	7.73			

<b>Franklin, New York</b> – includes Franklin County; and Crown Point, Keene, Minerva, Newcomb, North Elba, North Hudson, St. Armand, Schroon, and Ticonderoga towns in Essex County.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	7	\$45.5M	5.05	2573	80	6
<i>First Niagara</i>	4	\$71.1M	7.89			
<i>KeyCorp Post-Consummation</i>	3	\$116.6M	12.94			
<b>Ithaca, New York</b> – includes Tompkins County; Cortland city, Cortlandville, Harford, Lapeer, and Virgil towns in Cortland County; and Catherine, Cayuta, and Hector towns in Schuyler County.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	11	\$21.2M	0.90	3057	18	11
<i>First Niagara</i>	2	\$224.8M	9.57			
<i>KeyCorp Post-Consummation</i>	2	\$246.0M	10.47			
<b>Jamestown, New York-Pennsylvania</b> – includes Chautauqua County, New York; and Clarendon borough, Warren city, and Conewango, Elk, Farmington, Glade, Mead, and Pine Grove townships in Warren County, Pennsylvania.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	5	\$147.9M	8.54	1694	254	12
<i>First Niagara</i>	4	\$258.6M	14.93			
<i>KeyCorp Post-Consummation</i>	1	\$406.5M	23.46			

**Metro New York City, New York-New Jersey-Connecticut-Pennsylvania** – includes Fairfield County; Bethlehem, Bridgewater, Canaan, Cornwall, Goshen, Kent, Litchfield, Morris, New Milford, North Canaan, Plymouth, Roxbury, Salisbury, Sharon, Thomaston, Warren, Washington, Watertown, and Woodbury towns in Litchfield County; Ansonia, Beacon Falls, Bethany, Cheshire, Derby, Hamden, Meriden, Middlebury, Milford, Naugatuck, North Haven, Orange, Oxford, Prospect, Seymour, Southbury, Wallingford, Waterbury, Wolcott, and Woodbridge in New Haven County, all in Connecticut; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster and Westchester counties; Hudson city, Ancram, Clermont, Copake, Gallatin, Germantown, Greenport, Livingston, and Taghkanic towns in Columbia County; Catskill, Halcott, Hunter, and Lexington towns in Greene County, all in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties; Pemberton and Wrightstown boroughs, Bass River, New Hanover, North Hanover, Pemberton, Shamong, Southampton, Tabernacle, Washington, and Woodland townships in Burlington County; Hightstown, Hopewell, Pennington, Princeton boroughs, East Windsor, Ewing, Hopewell, Lawrence, Princeton, Robbinsville, and West Windsor townships in Mercer County; Washington borough, Belvidere and Hackettstown towns, Allamuchy, Blairstown, Franklin, Frelinghuysen, Greenwich, Hardwick, Harmony, Hope, Independence, Knowlton, Liberty, Lopatcong, Mansfield, Oxford, Washington, and White townships in Warren County, all in New Jersey; Pike County; Delaware Water Gap, East Stroudsburg, Mount Pocono, and Stroudsburg boroughs, Barrett, Coolbaugh, Middle Smithfield, Paradise, Pocono, Price, Smithfield, and Stroud townships in Monroe County; and Hawley borough, Berlin, Damascus, Dreher, Lebanon, Manchester, Oregon, Palmyra, Paupack, Salem, and Sterling townships in Wayne County, all in Pennsylvania.

	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	42	\$2.4B	0.19	1300	0	241
<i>First Niagara</i>	36	\$3.0B	0.15			
<i>KeyCorp Post-Consummation</i>	27	\$5.4B	0.34			

**Rochester, New York** – includes Chemung, Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates counties; Alfred, Almond, Andover, Birdsall, Burns, Grove, Independence, Ward, Wellsville, West Almond, and Willing towns in Allegany County; Bergen, Bethany, Byron, Elba, Le Roy, Pavilion, and Stafford towns in Genesee County; Albion, Barre, Carlton, Clarendon, Gaines, Kendall, Murray, and Yates towns in Orleans County; Dix, Montour, Orange, Reading, and Tyrone towns in Schuyler County; and Castile, Covington, Gainesville, Genesee Falls, Middlebury, Perry, and Warsaw towns in Wyoming County.

	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	8	\$1.0B	5.25	1079	74	26
<i>First Niagara</i>	6	\$1.4B	7.06			
<i>KeyCorp Post-Consummation</i>	2	\$2.4B	12.31			

<b>Saint Lawrence, New York</b> – includes Saint Lawrence County.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	3	\$103.4M	11.04	2734	149	8
<i>First Niagara</i>	5	\$63.0M	6.73			
<i>KeyCorp Post-Consummation</i>	2	\$166.4M	17.77			
<b>Syracuse, New York</b> – includes Cayuga, Onondaga and Oswego counties; Cincinnatus, Cuyler, Freetown, Homer, Marathon, Preble, Scott, Solon, Taylor, Truxton, and Willet towns in Cortland County; and Cazenovia, DeRuyter, Fenner, Georgetown, Lenox, Lincoln, Nelson, Smithfield, and Sullivan towns in Madison County.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	3	\$1.4B	11.9	1395	218	23
<i>First Niagara</i>	4	\$1.1B	9.13			
<i>KeyCorp Post-Consummation</i>	2	\$2.6B	21.03			
<b>Utica-Rome, New York</b> – includes Herkimer and Oneida counties; and Oneida city, Brookfield, Eaton, Hamilton, Lebanon, Madison, and Stockbridge towns in Madison County.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	9	\$63.8M	1.41	1349	27	10
<i>First Niagara</i>	7	\$425.9M	9.45			
<i>KeyCorp Post-Consummation</i>	7	\$489.7M	10.86			

<b>Watertown, New York</b> – includes Jefferson and Lewis counties.						
	<b>Rank</b>	<b>Amount of Deposits</b>	<b>Market Deposit Shares (%)</b>	<b>Resulting HHI</b>	<b>Change in HHI</b>	<b>Remaining Number of Competitors</b>
<i>KeyCorp Pre-Consummation</i>	3	\$236.4M	17.31	2636	80	10
<i>First Niagara</i>	7	\$31.6M	2.31			
<i>KeyCorp Post-Consummation</i>	2	\$268.0M	19.62			